BOOK REVIEWS AND NOTICES

Control of the Market. A Legal Solution of the Trust Problem. By BRUCE WYMAN. New York: Moffat, Yard & Co., 1911. 8vo, pp. vii+282.

Nobody who is interested in studying the trust problem should fail to read this book. Whether or not one believes that the suggestions here made are the best method of procedure, whether one concludes that they cover only a portion of the necessary measures or are adequate in themselves, he must admit that these suggestions show so much insight into the real character of the problem and present such a natural and easy method of procedure as to deserve the most thoughtful attention.

The author's thesis, in brief, is that from the legal point of view the modern trust is simply an old problem in a new guise. The common law long ago developed the principles necessary to meet this problem in the law as to restraint of trade and the law of public callings. What we now need to do is to apply these old principles of the common law to the same problem in its modern guise. In expounding the growth of these legal principles the author shows a keen perception of the influence of economic conditions upon their development—something the importance of which still remains to be generally recognized by both bench and bar. In this way we learn how the policy of the state toward industry has changed from the old idea of careful regulation to the relatively modern principle of freedom and individualism. As a result there developed in the common law an underlying presumption in favor of freedom of competition. While the general rule thus favors freedom, there have been found to be some conditions under which this does not work well. Consequently a number of methods of competition such as boycotting, libel or slander, and persuading a person to break contracts have come to be held illegal. At the same time certain forms of combination have been held illegal, so the monopolies have been driven from the pool to the old trust form and now to the single corporation or holding company, a desirable tendency in the opinion of the author, since this last is the form best subject to control. Professor Wyman then goes on to point out how, once monopolies have been driven to this form, we can fall back on another group of old and well-established principles of

the common law—the law of public callings. This law requires that all who come shall be served, and that they shall be served with adequate facilities, at reasonable rates, and without discrimination. It has long been applied to industries affected by a public interest in which monopolistic tendencies prevailed, as in the case of railroads, gas, electric light, water, telephone, and warehouse companies. The author very cogently suggests that we apply the same law to the industrial trusts, since they are the outgrowth of essentially similar economic conditions, only in a different branch of industry. We have the trust problem, he says, because the trusts are carrying on a predatory competition under the cover of the law of private callings. There follows an extremely concise, keen, and illuminating survey of the court decisions under the anti-trust law showing how, in the recent decisions in the Standard Oil and Tobacco cases, the Supreme Court has finally adopted the rule of reason, and concluding that "those who have faith in the essential justice of our common law will wish no amendment of the Sherman act, now that it has adopted the common-law standard" (p. 234).

That the suggestions here made have been advocated by the author for some years will at once be recognized by those familiar with his shorter articles or his presentation of the subject in the classroom. The legal principles on which they are based can be found presented in a more technical form in the author's *Cases on Restraint of Trade* and his treatise on *Public Service Corporations*. Those desiring to know simply the leading cases on the different points will find them conveniently listed in the notes at the end of each chapter.

To many the author's conclusion that the Sherman law, under the court's recent interpretation, is satisfactory will not be easy to reconcile with the policy of regulation which he elsewhere advocates (pp. 260, 262, 263, 277). Admittedly the attempts to destroy all the trusts which the Supreme Court considers unreasonable by splitting them up into parts may afford some degree of regulation, but to the reviewer it cannot appear as other than a very clumsy and back-handed method of procedure. In the first place it is based on the assumption that all trusts are either thoroughly good or absolutely bad, an assumption which has yet to be proved. In the second place it results in scattering the trusts into a much more inaccessible form (for the reviewer must confess to skepticism as to their actual destruction), a result directly the reverse of that which the author considers so desirable (cf. p. 261). This approval of the Sherman law, however, does not seem a necessary part of the author's suggestions, and the author himself elsewhere

intimates that further legislation of a regulative character may prove desirable (p. 262). Aside from this point, the reviewer must add that from the time when he first heard these suggestions several years ago such further study as he has been able to give the question has only confirmed him in the conclusion that Professor Wyman has made a very valuable contribution toward the solution of this troublesome question, and one which, because of the less prominent and accessible form in which it was presented, has never received the attention to which it is entitled. It is as a contribution, however, rather than as a finally complete and effective solution of the question that it will have to be regarded. To the reviewer's mind, at least, a thoroughly effective plan of procedure must be somewhat broader in scope and will need to go deeper down nearer the real roots of the evil in its point of attack. The suggestions here made, nevertheless, may well form a part of this more comprehensive scheme. It is therefore most sincerely to be hoped that in the more elaborate presentation in book form they will receive that careful consideration which they so unquestionably deserve.

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Monopoly and Competition: A Study in English Industrial Organization. By HERMANN LEVY. London: Macmillan, 1911. 8vo, pp. xviii+33. $3.25.

Its timeliness and importance fully justify the speedy translation of this addition to trust literature, which appeared first in 1909 under the title *Monopole, Kartelle und Trusts.*

Two theses are here propounded, explained, illustrated, and emphasized by an abundance of facts, new and old, borrowed and discovered, presented clearly and repeatedly. The main idea running throughout the work is that the historical alternation of monopoly and competition is an economic necessity. The second theme is the qualifying explanation of the delayed arrival of monopolistic conditions in England. That country has lagged behind Germany and the United States in the main because of three facts: free trade; the comparative insignificance of freight charges due to the small size of the country and the low cost of ocean transportation; and the absence of mineral deposits that could be readily controlled and made the basis of monopoly. Within the limits set by these conditions the favorable influences working toward monopoly are the concentration of undertakings, the relative lowness